

**DEC 05 2005**

**CATHY A. CATTERSON, CLERK**  
**U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

PAUL E. LEPKOWSKI,

Petitioner - Appellant,

v.

ROSIE B. GARCIA, Warden,

Respondent - Appellee.

No. 02-56006

D.C. No. CV-00-13197-ABC

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Central District of California  
Audrey B. Collins, District Judge, Presiding

Submitted November 8, 2005<sup>\*\*</sup>

Before: WALLACE, LEAVY, and BERZON, Circuit Judges

California state prisoner Paul E. Lepkowski appeals pro se the district court's judgment denying his 28 U.S.C. § 2254 petition challenging his conviction for three counts of second degree robbery. We have jurisdiction under 28 U.S.C.

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

§ 2253, and we affirm.

Lepkowski contends that the prosecutor committed misconduct when his law clerk allegedly coached a prosecution witness. We disagree. Even if the statements amounted to misconduct, Lepkowski failed to show that the misconduct “so infected the trial with unfairness as to make the resulting conviction a denial of due process.” *See Darden v. Wainwright*, 477 U.S. 168, 181 (1986). Therefore, the state court’s adjudication was not contrary to or an unreasonable application of controlling federal law. *See Delgado v. Lewis*, 223 F.3d 976, 979-82 (9th Cir. 2000).

To the extent that Lepkowski’s brief raises uncertified issues, we construe his arguments as a motion to expand the certificate of appealability, and we deny the motion. *See Hiivala v. Wood*, 195 F.3d 1098, 1104-05 (9th Cir. 1999) (per curiam); 9th Cir. R. 22-1(e).

**AFFIRMED.**